

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Federal-State Joint Board on Universal
Service

CC Docket No. 96-45

**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES
COMMISSION AND OF THE PEOPLE OF THE
STATE OF CALIFORNIA**

The People of the State of California and the California Public Utilities Commission (“California” or “CPUC”) respectfully submit these Reply Comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) October 27, 2003 Further Notice of Proposed Rulemaking in the above-captioned docket (“*FNPRM*”).¹ In the *FNPRM*, the Commission sought comment on issues relating to the rate review and expanded state certification process recommended by the Joint Board. In particular, the Commission sought comment on whether all states should be required, in their certification process, to provide additional rate data. In the Commission’s *Order on Remand*,² the Commission expanded the certification process so that each state will be required to file annually with the Commission a certification stating whether its rural rates are reasonably comparable to urban rates nationwide. As part of the rate review and expanded certification process, the Commission adopted a nationwide urban rate benchmark, below which rural rates may be presumed reasonably comparable to urban rates nationwide. The additional rate data would include business rate data,

¹ Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 03-249 (rel. Oct. 27, 2003) (“*FNPRM*”)

rate data for non-rural areas served by non-rural carriers, and rate data from states that would not otherwise be required to file data under the Commission's rules.

The Commission also sought comment on a proposal to make available additional targeted federal support for high-cost wire centers in states that implement explicit universal service mechanisms. The purpose of this proposal would be to create an incentive for states to implement explicit universal service mechanisms. Under this proposal, states with explicit universal service mechanisms would receive additional targeted federal support even if the state had achieved rate comparability and received no high-cost support for its non-rural carriers.

For the reasons discussed below, California opposes any additional burdens applicable to all states, such as filing additional rate data for certification purposes. California also urges the Commission to limit universal service funding for the purpose and principles of the Telecommunications Act of 1996 ("1996 Act"), and not impose additional funding burdens on those who are net contributors to the fund. The Commission should also be cautious of proposals that would expand the size of the federal fund above the current level. The Commission has set forth a number of issues for comment in this *FNPRM*, and the CPUC comments only on some of these issues. Silence on the other issues connotes neither agreement nor disagreement with these proposals.

II. DISCUSSION

A. The Commission Should Not Require Additional Rate Information From All States.

The Commission requests comment on whether all states should be required to file additional data including business rate data, rate data for non-rural areas served by non-rural

² Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Order on Remand*, FCC 03-249, par. 22, (rel. October 27, 2003).

carriers, and other rate data in connection with the certification process for the purpose of the Commission's ability to assess reasonably comparable urban and rural rates. (*FNPRM*, par. 109.) This proposal would require all states, including those states that do not receive any high-cost funds and those that do not seek any additional funding, to file additional rate data. California, along with other commenters, opposes requiring all states to file the proposed additional rate data. (Verizon Comments at 2; NASUCA Comments at 5.) As commenters pointed out, the Commission already has sufficient data to calculate universal service high-cost funding and rate comparability. (Verizon Comments at 5-6; NASUCA Comments at 4-5.) Requiring states to file additional data would be unnecessary and duplicative. Moreover, the Commission should not impose burdensome requirements on states that will not receive funds for non-rural high-cost support or as Verizon stated, for those states that are not seeking universal service funds above and beyond the amounts allocated to them. (Verizon Comments at 2.)

B. The Commission Should Be Cautious of Using Universal Service Funds For Purposes Beyond Those Principles Specified In The Telecommunications Act Of 1996 and Not Impose Additional Funding Burdens on Net Contributors to the Universal Service Fund.

The Commission sought comment on making additional targeted federal support available for high-cost wire centers in states that implement explicit universal service mechanisms, without regard to their achievement of rate comparability, in order to encourage states to adopt explicit universal service mechanisms. As other commenters have noted, there is nothing in the 1996 Act or the Tenth Circuit opinion, *Qwest Corp. v. FCC*,³ that requires that

³ 258 F.3d 1191 (10th Cir. 2001)

state universal service support be explicit, only that federal funding be explicit.⁴ (Verizon Comments at 8-9)

The Tenth Circuit in *Qwest Corp. v. FCC* observed that the Commission must base its universal service policies on the principles listed in section 254(b). The court found two principles in section 254(b) most relevant here. Specifically, the court cited section 254(b)(3) which provides: “Access in rural and high cost areas. Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”⁵ Also, the court found relevant section 254(b)(5) which provides that “there should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.” The court also cited section 254(e), which states any *federal* support for universal service “should be explicit and sufficient to achieve the purposes of this section.”⁶

In comments filed December 19, 2002 in this proceeding (“CPUC Comments, December 19, 2002”) the CPUC stated that states set intrastate rates; therefore, states have primary responsibility for ensuring reasonably comparable rural and urban rates. States may rely on either implicit or explicit mechanisms to transfer support from low-cost lines to high-cost lines within a state. (CPUC Comments, December 19, 2002) As the Commission provided in the

⁴ Some commenters argue that having an explicit universal service mechanism should be made a requirement for receiving any funding for high-cost support. There is no basis under the 1996 Act or *Qwest Corp. v. FCC* for the Commission to make that requirement.

⁵ 47 U.S.C. section 254(b)(3).

Order on Remand, “primary state responsibility for ensuring intrastate rate comparability is consistent with state ratemaking authority under the Act. The states, not the Commission, set intrastate rates. . . . We believe that the states generally are fulfilling their responsibilities under the Act, with the help of federal support in high-cost states, to ensure reasonably comparable rates in rural and urban areas within their borders.”⁷

The responsibility for ensuring comparability between rural and urban rates is primarily a matter for each individual state, and is not a responsibility that other states should be required to assume. If a state’s rates are not reasonably comparable under the current mechanism, it would be due to state action or lack thereof, which could include any of the reasons given previously as to why rates vary among states. (e.g., local rates may vary from state to state depending on each state’s local rate design policies; whether or not a carrier’s rates are set based on a price cap approach; the degree to which implicit subsidies may remain within local rates; whether a state universal service fund exists; and other factors.) If a state does not have reasonably comparable rates, further federal actions could include modifying calling scopes or improving quality of service where state commissions have limited jurisdiction. The federal methodology should rely primarily on states to achieve reasonably comparable rates between urban and high cost areas within their borders, while providing federal support for states with above-average costs to the extent that such costs prevent the state from ensuring such comparability. Although explicit state universal service mechanisms may be a laudable goal, the states should determine what is in their best interest.

⁶ 47 U.S.C. section 254(e).

⁷ *Order on Remand*, FCC 03-249, par. 22.

California has also indicated its support for a federal universal service methodology for funding high cost areas that embodies seven principles: (1) the methodology uses forward-looking costs to determine high cost support; (2) federal high cost support is narrowly targeted to truly high cost areas throughout the nation; (3) the federal high cost support fund is modestly sized; (4) the methodology minimizes the burden on those that contribute to it, and reduces distortions in the marketplace caused by such methodology; (5) contributions to the federal high cost fund are based solely on assessing interstate revenues; (6) recovery of federal charges for the high cost fund is only from interstate rates; and (7) the methodology for determining the level of high cost support is administratively simple to use and apply. (CPUC Comments, December 19, 2002.) All of these principles are consistent with the 1996 Act. In the *Rural Task Force Order*, the Commission stated that “sufficiency” requires that the universal service support not be excessive, citing the United States Court of Appeals for the Fifth Circuit’s caution that “excessive funding may itself violate the sufficiency requirements of the Act.”⁸ The Joint Board in the *Recommended Decision* also reaffirms that the statutory principle of sufficiency means that non-rural high-cost support should only be as large as necessary to achieve its statutory goal.⁹

The Commission’s proposal to make additional support based on a state having an explicit mechanism for funding universal service intrastate appears to undermine the Commission’s goals of limiting the size of the federal fund and using the support for high-cost areas. California believes that Commission proposals should equitably balance consumer interests in those states that are contributors to, and in those states that are recipients of, federal

⁸ *Rural Task Force Order*, 16 FCC Rcd at 11257, par. 27 (quoting *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 619 (5th Cir. 2000)).

⁹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended

funding. California is especially concerned about any proposal that would expand an already inflated federal universal service fund. Correct fund size is essential to ensure that all consumers benefit from universal service. Under the Commission's proposal, net contributing states, including those states with explicit universal service mechanisms, would pay more to induce states to have explicit intrastate funding mechanisms. Indeed, even states with explicit universal service mechanisms would need to contribute more to the federal fund to receive the additional support. In some cases, the state's contribution for this additional targeted federal support would exceed the additional federal support they would receive, especially those states that are already net-contributors to the high-cost fund. This proposal could exacerbate the burden on net-contributors to the high-cost fund.

In addition, as recognized by both Congress and the Commission, the purpose of universal service is to ensure that primarily residential customers have access to affordable telephone service. As provided in section 254(b) of the Act, one of the goals of universal service is for rural consumers to have access to telecommunications services at rates that are reasonably comparable to rates charged for similar services in urban areas. In this case, the Commission has failed to demonstrate a nexus between additional funding being given based solely on a state's explicit universal service methodology and a state achieving rate comparability. Providing additional support to high-cost wire centers in states that adopt the Commission's policy of making all support explicit may not further universal service. If the existing high-cost fund produces reasonably comparable rates in rural and urban areas, then this additional support may be unnecessary. In addition, as one commenter noted, the Commission does not define an "explicit state mechanism" and seeks comment on what it should mean. (Pennsylvania Public Utilities Commission Comments at 5.)

III. CONCLUSION

California opposes any additional requirement for *all* states to submit additional rate data. This proposal would be burdensome to states and unnecessary. California also cautions the Commission to limit universal service funding for the purposes and principles of the Act, and not impose additional funding burdens on those who are net contributors to the fund.

Respectfully submitted,

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